

**REQUEST FOR PROPOSALS  
FOR COMMERCIAL LEASE  
OF STATE TRUST LAND**

**BEAVER CREEK COMMERCIAL LEASE**

**EXHIBIT L**

**QUESTIONS SUBMITTED TO DNRC BASED ON PRIOR RFP AND  
DNRC RESPONSES**

Trust Land, Wibaux County, Montana

T13N, R59E, Section 4 (NE¼)

T13N, R59E, Section 16 (All)

T14N, R58E, Section 36 (All)

T14N, R59E, Section 16 (All)

T15N, R58E, Section 36 (W½)

T15N, R59E, Section 34 (NE¼)

T16N, R59E, Section 36 (All)

T16N, R60E, Section 16 (All)

**Montana Department of Natural Resources and Conservation  
January 26, 2016**



The following is a list of questions received in relation to the January 6, 2016, Requests for Proposals for Commercial Lease of State Trust Land by Montana Department of Natural Resources and Conservation.

**Land for Lease:**

**Q** Can additional parcels be included to the RFP?

Here is a list of all the parcels of interests (also see Exhibit A below).

Property ID	Township	Range	Section	Legal Description
1410931	16 N	59 E	36	S36, T16 N, R59 E, ALL
1410932	16 N	60 E	16	S16, T16 N, R60 E, ALL
1410918	14 N	59 E	16	S16, T14 N, R59 E, ALL
1410922	15 N	59 E	34	S34, T15 N, R59 E, NE4
1410920	15 N	58 E	36	S36, T15 N, R58 E, W2
1410917	14 N	58 E	36	S36, T14 N, R58 E, ALL
1410912	13 N	59 E	04	S04, T13 N, R59 E, LOTS 1,2 S2NE4
1410913	13 N	59 E	16	S16, T13 N, R59 E, ALL

A: Yes. Because it is important to afford all parties an equal amount of notice of potentially affected parcels, this RFP is being revised and released again with a full 90 day response time, rather than amending the original RFP within its timeline.

**Option to Lease:**

**Q** During the “Option period”, will the project company have rights to access the premises for purposes of inspection, survey, environmental studies, wind studies, and other reasonable activities related to the investigation of the feasibility of the wind project?

A: Yes. While the Option to Lease instrument is specific to securing future Lease rights, a Land Use License can be issued concurrently to secure access to the Option premises for purposes of due diligence related to the intended Lease.

**Q** Can we install a temporary met tower, SODAR and LIDAR instruments during the “Option period” to conduct wind and weather monitoring activities?

A: Yes, this can be arranged within the concurrent Land Use License.

**Q** Will a memorandum of option agreement be executed concurrently with the Option for recording purposes?

A: At the request of the Option holder, a memorandum of option agreement can be recorded.

**Q** Can the Option agreement be issued for an initial term of five years with an option to extend for an additional five years?

**A:** Currently, 77-1-905(4), Montana Code Annotated specifies a maximum Option term of two years.

**Q** Can language be added to the Option and Lease as to owner's representations and warranties regarding title of property?

**A:** No. A lessee should include verification of land ownership in their due diligence. The State cannot warranty title even in land sale situations.

**Q** Can the Option be exercise for some parcels and not others? Stated otherwise, can we sign the Lease agreement for fewer parcels than what is covered under the Option?

**A:** Yes.

**Lease Agreement:**

**Q** Can Lease agreement be separated or broken down into separate phases? This would allow for better alignment with our other leases. The three phases contemplated would be Feasibility, Construction and Operations.

**A:** No. However a Proposal may craft a proposed payment schedule to align with the development phases.

**Q** Can we record a memorandum of lease agreement similar to the Option memorandum?

**A:** Yes.

**Q** The Lease calls the first year payment to be made by cashier's check drawn from Montana bank; can we take this out and process payment from project company's bank?

**A:** The current DNRC policy does specify payment through a Montana bank.

**Q** Once the Lease is in effect, can the project company terminate the Lease at any time and for any reason for all or any part of the premises?

**A:** The Lease will require a Notice Period and a mechanism to Cure. In addition, the Respondent may request that a new section be added to the lease template to specifically address lease termination for all or a portion of the project. It may be possible to remove a part of the premises from the Lease, contingent upon the feasibility of restoring that portion to other productive uses.

**Q** Section 8.2 of the lease limits our rights to "construct, install, alter, or remove any Improvements" under the lease by requiring "written consent of Lessor"; can this portion of this section be removed or changed so that written consent is not required?

**A:** No, ARM 36.25.125 requires DNRC to review and approve installation or removal of improvements on Trust land. The Respondent may suggest that a change be made in the lease template to provide for a time limit of DNRC review.

**Q** Can Section 8.3 - regarding with the reversionary interest in the improvements to Lessor - be deleted or made inapplicable to wind power facilities?

**A:** DNRC may be willing to add a Decommissioning section to a renewable energy lease, but would retain the reversionary interest in the case of abandoned improvements.

**Q** Can the Lease agreement be freely assignable without consent from DNRC?

**A:** No, per ARM 36.25.118, DNRC consent is required in the assignment of leases on Trust land.

**Q** Can project company grant liens and other security interests in its improvements without consent from DNRC?

**A:** No, per ARM 36.25.122 DNRC consent is required.

**Payment Terms:**

**Q** Can some of the terms and timing of the payments be modified to synchronize better with our other lease agreements in the project?

**A:** Yes. DNRC can accommodate a requested payment schedule, but would require the frequency to be either annual or semiannual.

**Q** Can we propose changes to some of the definitions and calculations to align with our other leases? This would alleviate potential administration and accounting complications. For example, the State lease calculates Gross Annual Revenues based on lease years tied to the lease commencement date. Our standard Wibaux project lease form calculates Gross Revenues based on production years tied to calendar years.

**A:** Yes. The Respondent may propose additions or changes to the lease template document that will be subject to DNRC review and mutual approval of any additions or changes to the lease template.

**General Questions:**

**Q** Can language be added to the Option and Lease agreements as to owner's representations and warranties regarding title of property?

**A:** No. A lessee should include verification of land ownership in their due diligence. The State cannot warranty title even in land sale situations.

**Q** Can we get a list of Option and Lease terms that are dictated by state law and are therefore non-negotiable?

**A:** No. All state statute is public record available for your review.

**Q** Will the DNRC provide assistance to the project company in the completion and execution of supporting documents needed for permitting, title curative, insurance, and other approvals needed for construction of project?

**A:** No, DNRC does not assist with a lessee's dealings with other governing bodies. However, DNRC will not with-hold signature to such documents when needed.